SIM MIN TECK

v.

PUBLIC PROSECUTOR

COURT OF CRIMINAL APPEAL, SINGAPORE
WEE CHONG JIN CJ
LAI KEW CHAI J
AP RAJAH J
[CRIMINAL APPEAL NO. 6 OF 1985]
24 FEBRUARY 1987

CRIMINAL LAW AND PROCEDURE: *Appellant sentenced to death for murder - Appeal - Evidence of accomplice - Evidence impeached - Reliance - Appellant convicted of murder while accomplice convicted for culpable homicide not amounting to murder - Whether appellant's conviction for murder was wrong in law.*

The appellant was convicted on two charges of murder. He was sentenced to death. He appealed against the conviction. His grounds were:

(a) the appellant did not inflict the fatal injuries on the victims;

(b) the Judge erred in concluding that the appellant caused fatal injuries on the victims upon relying on the evidence of an accomplice, whose evidence was impeached;

(c) as the accomplice was convicted of the lesser offence of culpable homicide not amounting to murder on the same facts, it follows that the appellant's conviction for murder was wrong in law.

Held:

[1] There was overwhelming evidence that the appellant and the accomplice were armed with knives intending to use them if resistence was offered, and the victims were fatally stabbed to death with knives in the circumstances which amounted to murder by one or more of them. In view of this overwhelming evidence, it follows that the appellant's grounds (a) and (b) should be rejected.

[2] Even though the accomplice was convicted for culpable homicide not amounting to murder, the appellant could be convicted for murder if the offence was committed in furtherance of common intention.

[Appeal dismissed; conviction affirmed.]

Case referred to:
Teh Chong Poh v. Public Prosecutor [1979] 1 MLJ 50

Legislation referred to:
Constitution of the Republic of Singapore [Sing], arts. 12(1), 35(8)
Federal Constitution, art. 145(3)

JUDGMENT

Wee Chong Jin CJ, Lai Kew Chai J, AP Rajah J:

The appellant, Sim Min Teck, was convicted by the High Court on two charges that on 2 November 1980 at about 8.50 a.m. at Block 35, Unit 201, Fishery Port Road, the office of M/s. Siang Huat Fish agent, with Beh Meng Chai and Chng Meng Joo, also known as Sam

Mau @ Ah Joo, in furtherance of a common intention committed murder by causing the deaths of Lee Cheng Tiong and Teo Keng Siang. He was sentenced to death. His appeal against both convictions was dismissed by us. We now give our reasons.

The facts of the case can be briefly stated. The appellant met Beh Meng Chai ("Beh") and Chng Meng Joo ("Chng") on 1 November 1980. The appellant and Chng planned to commit robbery and invited Beh to join them. The three of them met on the following morning and boarded a bus and went to a fish market in Jurong. Two of them, namely, the appellant and Chng, were then each armed with a knife and they went to Block 35, Unit 201, Fishery Port Road, which is the office of M/s. Siang Huat Fish Agent. They entered the premises, and while Beh waited at the outer office, the appellant and Chng entered the inner office where they found the proprietor, Lee Cheng Tiong ("Leo"). They confronted Lee but the latter put up a fight, in the course of which, he was stabbed and killed.

After Lee was killed, the appellant took the deceased's money in the inner office and Beh and Chng then removed the gold chain from the deceased's neck. When they were about to leave the premises, a youth, Teo Keng Siang ("Teo") came in. Teo at that time was working for Mui Tong Fish Agent whose premises, Unit 209, were on the same floor, a few doors away from Lee's office. He was sent there by his employer to change money with Lee. Teo was told by one or two of them that Lee was not in, but he insisted that he was in and went into the inner office. Upon entry, he discovered that Lee had been killed. Teo was subsequently also stabbed and killed by one or more of the three namely: the appellant, Beh and Chng and some money in his possession was taken.

Professor Chao Tzee Cheng, the senior forensic pathologist, carried out autopsies on the bodies of Lee and Teo and submitted his autopsy reports. He found nine stab wounds in Lee, of which two were fatal, namely: one was a combination of two stab wounds just above the right nipple caused by a knife which cut the second costal cartilage and penetrated the chest downwards and inwards to a depth of 10 cm. and penetrated the lower part of the right upper lobe of the lung and cut the right pulmonary vein, and the other was a wound slightly to the right of the left nipple of the deceased also caused by a knife which entered the chest horizontally and inward to a depth of 8 cm. cutting the left fourth costal cartilage and cutting the interior wall of the left ventricle of the heart 1 cm. in length. Both these injuries, Professor Chao said, were sufficient in the ordinary course of nature to cause death and death must have occurred within minutes. Professor Chao found four stab wounds that were inflicted on Teo, one of which was fatal. This fatal wound was caused by a knife which cut the right second costal cartilage and entered Teo's chest in a downward and inward direction to a depth of 5 cm., penetrating the lower part of the right upper lobe of the lung. This injury, according to Professor Chao, was sufficient in the ordinary course of nature to cause death and death also must have occurred within minutes.

The defence of the appellant was that he did not inflict the fatal injuries on Lee and he did not kill Teo. He admitted that he went with Beh and Chng to Siang Huat Fish Agent to commit robbery. According to the appellant when they entered the premises, Chng took out three knives and gave one to him, one to Beh and he kept one himself, and when he and Chng entered the inner office, Chng rushed at Lee and fought with Lee. It was Chng who stabbed Lee a few times and the appellant was trying to separate them, and in so doing, Lee, who had managed to seize the knife from Chng and who had stabbed Chng, swung the knife at him and he dodged and stabbed Lee on the back near the waist. Immediately thereafter, Lee fell. The appellant said he had to stab Lee because the latter swung the knife at him. He also denied he killed Teo. He said that when they were about to leave the premises.

Teo arrived and insisted that Lee was in and then went into the inner office. He followed Teo into the inner office, and on discovering that Lee was killed Teo shouted and said he wished to report. He then tried to snatch the knife from the appellant who took fright and stabbed Teo once at his left waist. Having done that, he then went out and asked Beh and Chng to get a rope to tie up Teo. Instead they rushed into the inner office and stabbed Teo with their knives and killed him.

The trial judges rejected the defence of the appellant that he stabbed Lee after Lee had swung at him with a knife. They accepted the evidence of Beh, whom they considered an accomplice whose evidence had to be treated with caution, that he saw from his position in the outer office a fight between Lee and the appellant and Chng. Beh also said that when he entered the inner office he saw Chng standing behind Lee and saw Lee stabbing Chng from over his shoulder. Beh caught hold of Lee's right hand and soon after when he released it Lee fell against Chng's body. The trial Judges on Beh's evidence found that Lee's injuries were inflicted by te appellant and Chng during the course of the fight. The trial Judges also rejected the defence of the appellant that he stabbed Teo only once on his left waist because of fright and they found that the appellant killed Teo to facilities his get-away after the robbery.

At the hearing of the appeal it was submitted on behalf of the appellant that the trial judges should have totally disregarded Beh's evidence as they had found that his evidence had been successfully impeached and that as the case against the appellant rested solely on the evidence of Beh, an accomplice, there was no evidence to support the convictions. We rejected the submissions. The evidence was overwhelming that the appellant, Chng and Beh entered the unit, each armed with a knife, to commit robbery and intending, if necessary, to use them if any resistance was offered by any person in that Unit. The unchallenged and undisputed evidence was that both deceased were fatally stabbed with knives in circumstances which amounted to murder by one or more of them and that the stab wounds were inflicted in furtherance of their common intention to armed robbery and if necessary to use the knives they were armed with.

Another submission advanced on behalf of the appellant was that as Beh had been charged and convicted on a plea of guilty of the lesser offence of culpable homicide not amounting to murder the appellant's conviction for murder was wrong in law. The argument, as we understood it, was that the offence that was committed in furtherance of the common intention of the appellant, Chng and Beh could not amount to the offence of murder because Beh had only been charged and convicted of the offence of culpable homicide not amounting to murder. We rejected that contention as without any substance and contrary to long established authorities.

Lastly, it was contended on behalf of the appellant that because Beh had been charged on the same facts with the lesser offence, the appellant had been discriminated against contrary to Article 12(1) of the Constitution of Singapore which states that "All persons are equal before the law and entitled to the equal protection of the law. "We rejected this contention. The Attorney-General of Singapore is by Article 35(8) of the Constitution given power, exercisable at his discretion to institute, conduct or discontinue any proceedings for any offence. As was said by Lord Diplock when delivering the judgment of the Privy Council in *Teh Chong Poh v. Public Prosecutor* [1979] 1 MLJ 50 at p. 56 said of the discretion exercisable by the Attorney-General of Malaysia under Article 145(3) of the Malaysian Constitution which is in *pari materia* with our Article 35(8):

There are many factors which a prosecuting authority may properly take into account in exercising its discretion as to whether to charge a person at all, or, where the information available to it discloses the ingredients of a greater as well as a lesser offence, as to whether to charge the accused with the greater or the lesser. The existence of those factors to which the prosecuting authority may properly have regard and the relative weight to be attached to each of them may vary enormously between one case and another. All that equality before the law requires, is that the cases of all potential defendants to criminal charges shall be given unbiased consideration by the prosecuting authority and that decisions whether or not to prosecute in a particular case for a particular offence should not be dictated by some irrelevant consideration.

For all these reasons we dismissed the appeal.

Also found at [1987] 2 CLJ 94